

CASE NO.:
Appeal (crl.) 969 of 2000

PETITIONER:
P. SOUNDARYA

RESPONDENT:
INCOME TAX OFFICER, TAMIL NADU

DATE OF JUDGMENT: 01/04/2008

BENCH:
P.P. Naolekar & Aftab Alam

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO.969 OF 2000

1. The facts of the case, in brief, are that the appellant is a sister of Kumari R. Jayaprada. A search under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was made of the premises of Kumari R. Jayaprada on 17.2.1983. In the course of the search, the statement of appellant was recorded wherein she stated that the house bearing Door No.20, First Cross Street, Lake Area, Nungambakkam, Madras was purchased on 22.11.1982 from one Smt. V. Seshamma. The appellant stated that the said house was purchased for Rs.2,40,000/- by selling a part of her jewelry and the jewelry of her mother Neelaveni and grandmother Rajamma. On the same day, i.e., 17.2.1983, the office premises of the Chartered Accountant of Kumari R. Jayaprada was also searched under Section 132 of the Act and in that search a receipt dated 31.8.1982 signed by Smt. V. Seshamma, acknowledging the receipt of advance amount towards the sale of the aforesaid house to the appellant and her mother Smt. P. Neelaveni, for a sale consideration of Rs.5,70,000/- was seized.

2. The appellant filed an application under Section 230-A(1) of the Act on 12.5.1983 for issuance of a certificate (N.O.C.) to her for settling the aforesaid property in the name of her minor son, retaining her life interest in the said property and declaring the sale consideration of the said property at Rs.2,40,000/-. As the real value of the aforesaid premises is said to have been paid as Rs.5,70,000/- and the appellant has declared the value of the said premises as Rs.2,40,000/- and, thus, there would be evasion of income tax on the balance sale consideration of Rs.3,30,000/-. The Department started proceedings under Sections 193 IPC read with Section 136 of the Act, Section 420 IPC read with Section 511 IPC and Sections 276-C(1) and 277 of the Act.

3. The trial court convicted the appellant under Section 420 read with Section 511 IPC, Section 193 IPC read with Section 136 of the Act and under Section 276-C(1) of the Act and under Section 277 of the Act (2 counts) and sentenced her to suffer 3 months R.I. and to pay a fine of Rs.300/- for offence under Section 420 read with Section 511 IPC and to suffer 3 months R.I. and to pay a fine of Rs.300/- for offence under Section 193 IPC read with Section 136 of the Act and to suffer 6 months R.I. and to pay a fine of Rs.500/- for offence under Section 276-C(1) of the Act and to suffer 6 months R.I. and to pay a fine of Rs.500/- in each count for offences under Section 277 of the Act with default clause. We are informed that the appellant has remained in jail for seven days. An appeal was filed before the Session Court and the Sessions Judge dismissed the appeal and confirmed the conviction and sentence imposed on the appellant. Thereafter, the appellant filed Criminal Revision Petition before the High Court. The High Court from the Assessment Order dated 24.3.1997 for the Assessment Year 1983-1984 has found that the price of the aforesaid property was assessed at Rs.6,75,000/- a sum of Rs.1,56,000/- was paid by the appellant while the balance amount of Rs.5,19,000/- was paid by Kumari Jayaprada and, therefore, no offence was made out under Sections 276-C(1) and 277 (two counts) of the Act against the appellant. However, the High Court has confirmed the conviction and

sentence imposed on the appellant under Sections 420 read with Section 511 IPC and Section 193 IPC read with Section 136 of the Act and sentenced her to undergo three months R.I. and to pay a fine of Rs.300/- for the offences under Section 420 IPC read with Section 511 IPC. The appellant was further directed to suffer three months R.I. and to pay a fine of Rs.300/- for the offences under Section 193 IPC read with Section 136 of the Act. The High Court set aside the conviction and acquitted the appellant for the offences under Section 276-C(1) and Section 277 (2 counts) of the Act.

4. It has been contended by learned senior counsel for the appellant that the proceedings were taken up against the appellant for filing an application under Section 230-A(1) of the Act (since deleted) to obtain a certificate (NOC) wherein the wrong valuation of the property was shown as Rs.2,40,000/-. He has further submitted that the appellant has been acquitted for the offences committed under the Act but has been convicted for the offences which are not related to the Act. Learned counsel has further contended that since the matter pertains to the Assessment Year 1983-1984, and almost 25 years have elapsed from the date of submission of the application for grant of certificate and at the relevant time she was aged about 25 years and now she is aged about 52 years and has children, a lenient view may be taken in the matter.

5. We have heard the submissions of the learned senior counsel for the appellant. Having regard to the peculiar facts and circumstances of the case that the appellant has been acquitted under Sections 276-C(1) and 277 of the Act and that the matter relates to the Assessment Year 1983-1984, in our view, the ends of justice will be subserved if the appellant's sentence is reduced to the period already undergone by her. We order accordingly. However, the appellant shall pay a fine of Rs.5,000/- each on both counts. We, however, make it clear that this order will not be treated as a precedent.

6. The appeal stands disposed of accordingly.